

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #4	CCRB Case #: 201704698	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 06/10/2017 1:30 AM	Location of Incident: [REDACTED]	Precinct: 100	18 Mo. SOL 12/10/2018	EO SOL 12/10/2018	
Date/Time CV Reported Sat, 06/10/2017 8:38 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 06/10/2017 8:38 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Frasca	7936	955927	100 PCT
2. POM Patrick Reilly	16493	957993	100 PCT
3. LT Henry Daverin	00000	945645	100 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Henry Daverin	Discourtesy: At § 87(2)(b) [REDACTED] in Queens, Lieutenant Henry Daverin spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B.LT Henry Daverin	Force: At § 87(2)(b) [REDACTED] in Queens, Lieutenant Henry Daverin used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Patrick Reilly	Abuse: At § 87(2)(b) [REDACTED] in Queens, Police Officer Patrick Reilly searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]
D.POM Michael Frasca	Abuse: At § 87(2)(b) [REDACTED] in Queens, Police Officer Michael Frasca questioned § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Michael Frasca	Abuse: At § 87(2)(b) [REDACTED] in Queens, Police Officer Michael Frasca frisked § 87(2)(b) [REDACTED]	[REDACTED]
F.POM Michael Frasca	Abuse: At § 87(2)(b) [REDACTED] in Queens, Police Officer Michael Frasca searched § 87(2)(b) [REDACTED]	[REDACTED]
G.LT Henry Daverin	Abuse: At § 87(2)(b) [REDACTED] in Queens, Lieutenant Henry Daverin searched § 87(2)(b) [REDACTED]	[REDACTED]
H.LT Henry Daverin	Discourtesy: En route to the 100 th Precinct stationhouse, Lieutenant Henry Daverin spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
I.POM Michael Frasca	Discourtesy: At the 100th Precinct stationhouse, Police Officer Michael Frasca spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On June 10, 2017, § 87(2)(b) filed this complaint with the CCRB by phone. On June 13, 2017, § 87(2)(b) also filed this complaint with 311 by email.

On June 10, 2017, at approximately 1:30 a.m., § 87(2)(b) and his friend, § 87(2)(b) were driving in the vicinity of § 87(2)(b) in Queens, when they were stopped by three male officers, identified by the investigation as Lt. Henry Daverin, PO Michael Frasca, and PO Patrick Reilly, all of the 100th Precinct.

Lt. Daverin approached the car from the front driver side and said to § 87(2)(b) “Get out of the fucking car” (**Allegation A**). Lt. Daverin then placed his hand through the driver side window, unlocked and opened the door, grabbed § 87(2)(b) by his left arm, and pulled him from the car (**Allegation B**). Lt. Daverin then brought § 87(2)(b) to the rear of the car and made several statements to § 87(2)(b) including, “What the fuck were you thinking to tell the police officer you don’t want to get out of the car?” and, “Oh, you fucking millennials. You think we have to tell you shit? We don’t have to tell you anything” (**Subsumed in Allegation A**).

While § 87(2)(b) was at the rear of the car, he saw PO Reilly get inside the front passenger seat of § 87(2)(b)’s car and check the center console area (**Allegation C**). PO Frasca asked § 87(2)(b) “Do you have any weapons on you?” and, “Do you have anything on you that I should worry about?” (**Allegation D**). PO Frasca also patted down and then placed his hands inside § 87(2)(b)’s back pants pockets, removing § 87(2)(b)’s keys, an electronic cigarette, and a prescription pill bottle that contained marijuana (**Allegations E, F, and G**). While still standing at the rear of the car, Lt. Daverin said to § 87(2)(b) “Maybe you should be like your friend. You need a fucking attitude adjustment” (**Subsumed in Allegation A**). PO Frasca or Lt. Daverin then placed § 87(2)(b) in handcuffs and walked him to the police vehicle.

En route to the 100th Precinct stationhouse, Lt. Daverin said to § 87(2)(b) “If you want to be a dick, we can be dicks all night” (**Allegation H**).

After § 87(2)(b) was brought to the stationhouse, he was placed in the holding cell. At some point, PO Frasca entered the room and said, “Are you fucking crazy telling the officer you do not want to get out of the vehicle?” (**Allegation I**).

Lt. Daverin did not prepare a memo book entry about this incident (**Allegation J**).

§ 87(2)(b) was arrested and charged with obstructing governmental administration in the second degree, criminal diversion of a prescription in the fourth degree, unlawful possession of marijuana, speeding, and driving with obstructed vision (BR 16).

There is no video recording of this incident.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to § 87(2)(b)’s arrest.
- As of July 17, 2017, no Notice of Claim has been filed regarding this incident (BR 02).
- § 87(2)(b) has no previous criminal convictions in New York City for the past ten years. He is scheduled to appear in court on § 87(2)(b), for the arrest stemming from this incident (BR 03).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)’s first CCRB complaint (BR 04).
- PO Michael Frasca has been a member of service for three years and has no prior CCRB history.

- PO Patrick Reilly has been a member of service for two years and has a total of two previous CCRB allegations stemming from one complaint that was made against him and closed as exonerated. § 87(2)(g)
- Lt. Henry Daverin has been a member of service for nine years and has a total of 56 previous CCRB allegations stemming from 22 separate complaints that were made against him.
 - In case #201702623, the allegations of vehicle search, frisk, and refusal to provide name and shield number were closed as substantiated with Command Discipline A. The NYPD concurred with the recommendation.
 - In case #201604699, the allegation of premises entered and searched was closed as substantiated with Command Discipline B. The NYPD penalty is pending.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) (BR 01) said that an officer, who he described as a white male, between 35 and 40 years old, approximately 220 pounds, with blue eyes, brown hair, wearing T-shirt, NYPD vest, and who he believed to be a supervisor, used profanities against him on scene and en route to the 100th Precinct stationhouse, and also pulled § 87(2)(b) from the vehicle.

Lt. Daverin acknowledged that he was the one who pulled § 87(2)(b) out of the car after he refused to exit, but denied using any profanity against § 87(2)(b) during this incident. PO Frasca also acknowledged that he pulled § 87(2)(b) out of the car, but denied using any profanity towards him.

According to Lt. Daverin's pedigree information sheet, he is a white male, § 87(2)(b) years old, 5'11" tall, 235 pounds, with brown hair, and green eyes. According to PO Frasca's NYPD Photograph, he is a white male, § 87(2)(b) years old, 5'5" tall, 170 pounds, with brown hair, and hazel eyes. As Lt. Daverin more closely matched the description provided by § 87(2)(b) **Allegations A, B, and H** are pleaded against Lt. Daverin. Lt. Daverin also acknowledged that he searched § 87(2)(b) during this incident. As such, **Allegation G** is pleaded against him.

Allegations not pleaded

- **Abuse of Authority:** Lt. Daverin and PO Frasca testified that they stopped § 87(2)(b)'s vehicle for speeding and because his rear view mirror was obstructed. The driver, § 87(2)(b) was arrested and charged in part with violating VTL § 375.30 (BR 05) and VTL § 1180 A (BR 06) for imprudent speed and obstructed vision. To plead a vehicle stop would thus constitute an arrest dispute. As such, no corresponding allegation has been pleaded.
- **Abuse of Authority:** § 87(2)(b) (BR 01) said that when Lt. Daverin placed his hand thought the driver side window and attempted to open the door, he took his cell phone in order to record the incident. Before he could record, Lt. Daverin grabbed and pulled him out, causing § 87(2)(b) to drop his phone. There is no evidence that § 87(2)(b) was removed from the car to interfere with him recording of this incident, particularly since Lt. Daverin had already instructed him to exit before he attempted to record. As such, no corresponding allegation has been pleaded.

- **Force:** § 87(2)(b) (BR 01) said that his handcuffs were placed on tightly, resulting in bruising to his wrists. Since § 87(2)(b) did not allege that the cuffs were further tightened at any point during the incident, no corresponding allegation has been pleaded.

Allegation A – Discourtesy: At § 87(2)(b) in Queens,

Lieutenant Henry Daverin spoke discourteously to § 87(2)(b)

Allegation B – Force: At § 87(2)(b) in Queens, Lieutenant Henry Daverin used physical force against § 87(2)(b)

§ 87(2)(b) (BR 01) said that at approximately 1:30 a.m., on June 10, 2017, he picked up his friend, § 87(2)(b) from work and was driving him home in his gray two-door sedan. At § 87(2)(b) § 87(2)(b) in Queens, § 87(2)(b) was pulled over by officers in an unmarked black sedan.

Before the officers approached, § 87(2)(b) took a water bottle, drank from it, and placed it back in the center console area.

§ 87(2)(b) denied speeding or committing any other traffic infraction prior being stopped by the police. § 87(2)(b) also denied smoking marijuana on the day of the incident or at any point inside the car, or that the car smelled of marijuana.

Three plainclothes officers, identified by the investigation as Lt. Daverin, PO Frasca, and PO Reilly, exited the sedan and walked over to § 87(2)(b)'s car. Lt. Daverin and PO Frasca approached the car from the front driver side, while PO Reilly walked over the front passenger side. Lt. Daverin immediately told § 87(2)(b) “Get out of the car.” § 87(2)(b) said to Lt. Daverin, “Wait, for what? I did not do anything. This does not seem right,” to which Lt. Daverin replied, “Get out of the fucking car.” § 87(2)(b) then said to Lt. Daverin, “I do not consent to any searches.” Lt. Daverin replied to § 87(2)(b) “I am not going to ask again. Get the fuck out of the vehicle,” to which § 87(2)(b) said, “No, it does not seem right.”

Lt. Daverin then placed his hand through the opened driver side window, unlocked and opened the driver side door, grabbed § 87(2)(b) by his left arm, and pulled him from the car.

Lt. Daverin walked § 87(2)(b) to the rear of the car and said to him, “What the fuck you were thinking telling the police officer you don’t want to get out of the car?” § 87(2)(b) asked Lt. Daverin to explain why he was pulled over. Lt. Daverin replied to § 87(2)(b) “Maybe you should be like your friend. You need a fucking attitude adjustment.”

During his CCRB telephone statement, § 87(2)(b) (BR 27) said that he asked Lt. Daverin why he needed attitude adjustment and Lt. Daverin responded, “Oh, you fucking millennials. You think we have to tell you shit? We don’t have to tell you anything.” § 87(2)(b) did not repeat this allegation in subsequent statements.

§ 87(2)(b) (BR 07) generally corroborated § 87(2)(b)'s statement, stating that after § 87(2)(b) was pulled over, an officer, identified by the investigation as Lt. Daverin, approached and asked § 87(2)(b) to exit the car. § 87(2)(b) refused, asking Lt. Daverin to explain why he was pulled over. Lt. Daverin then said to § 87(2)(b) “Get out of the fucking car.” § 87(2)(b) still refused, continuing to ask Lt. Daverin why he was pulled over. Lt. Daverin asked § 87(2)(b) approximately two or three times in the course of one or two minutes to exit the car, but § 87(2)(b) refused each time. Lt. Daverin then placed his hand inside the car, opened the car’s door, and pulled § 87(2)(b) out of the car.

After § 87(2)(b) was removed from the car, § 87(2)(b) exited shortly afterwards to see what was going on. When he attempted to approach § 87(2)(b) PO Reilly stopped him and asked

him not to come closer. Thus, § 87(2)(b) was unable to hear what conversation § 87(2)(b) had with Lt. Daverin at the rear of the car.

Lt. Daverin (BR 08) said that on June 10, 2017, at approximately 1:30 a.m., while driving eastbound in the vicinity of § 87(2)(b) in Queens, he saw a two-door sedan travelling southbound at excessive speed on § 87(2)(b). Lt. Daverin decided to stop the car due to the observed traffic infraction.

Lt. Daverin had to drive in excess of 55 MPH to be able to catch up with § 87(2)(b) and stop him. After pursuing § 87(2)(b)'s car for approximately two blocks, § 87(2)(b) pulled over in the vicinity of § 87(2)(b).

Lt. Daverin was approximately 10 feet away from the car when he saw the driver of the car, § 87(2)(b) throw something to the front passenger seat. Lt. Daverin did not see what it was, nor could he describe the object, but suspected that it could have been a weapon because of § 87(2)(b)'s movement inside the car.

Lt. Daverin and PO Frasca walked over to the front driver side, while PO Reilly approached the car from the front passenger side.

When Lt. Daverin approached the front driver side window, he smelled a strong odor of marijuana emanating from the car. Lt. Daverin asked § 87(2)(b) to exit the car. § 87(2)(b) refused and said that he did not consent to any searches. Lt. Daverin then said to § 87(2)(b) "Due to the smell of marijuana and the automobile exception, and in addition because you threw the item inside the car, I am going to ask you again to exit." § 87(2)(b) still refused. Lt. Daverin then informed § 87(2)(b) that if he did not exit the car, he was going to be placed under arrest for obstructing governmental administration. § 87(2)(b) continued to refuse to exit. At that point, Lt. Daverin considered § 87(2)(b) to be under arrest for obstructing governmental administration.

Lt. Daverin then placed his right hand thought the driver side window in an effort to open the door, at which point § 87(2)(b) rolled up the car's window, closing it on Lt. Daverin's arm, resulting in no injuries. Lt. Daverin did not issue any commands to § 87(2)(b) nor did he instruct § 87(2)(b) to roll down the window, because he was concerned with his safety and was trying to open the door as fast as he could. Eventually, Lt. Daverin managed to open the door. He then grabbed § 87(2)(b) by his arms and pulled him out of the car. Besides grabbing § 87(2)(b) by his arms and pulling him out of the car, Lt. Daverin denied using any other force against him.

Lt. Daverin denied saying to § 87(2)(b) "Get out of the fucking car," and, "I am not going to ask again. Get the fuck out of the vehicle." Lt. Daverin denied saying to § 87(2)(b) "What the fuck you were thinking telling the police officer you don't want to get out of the car?" or, "Oh, you fucking millennials. You think we have to tell you shit? We don't have to tell you anything," or, "Maybe you should be like your friend. You need a fucking attitude adjustment," or using any other profanity. Lt. Daverin denied using profanity towards § 87(2)(b) at any time.

It is indicated in § 87(2)(b)'s arrest report (BR 16) that he refused to exit the vehicle, preventing the arresting officer, PO Frasca, from conducting his lawful duties.

PO Frasca (BR 09) generally corroborated Lt. Daverin's testimony regarding his observation of the traffic infractions committed by § 87(2)(b) but said that he, not Lt. Daverin, approached the car from the front driver side door, and asked § 87(2)(b) for his driver's license and registration. PO Frasca had to request his documents once or twice before § 87(2)(b) provided them to him. § 87(2)(b) was combative in that he was reluctant to provide the documents. At that time, PO Frasca did not observe § 87(2)(b) make any movements, but heard PO Reilly ask § 87(2)(b) what he threw out of the car. PO Frasca did not hear if § 87(2)(b) responded. While interacting with § 87(2)(b) PO Frasca smelled an odor of marijuana wafting through the opened

car window. Because of this odor, and because § 87(2)(b)'s eyes were slightly red, PO Frasca thought § 87(2)(b) may have been driving while intoxicated on marijuana. § 87(2)(b)'s later combative behavior also contributed to this suspicion.

After § 87(2)(b) provided the documents, PO Frasca asked § 87(2)(b) to step out of the car due to the odor of marijuana. § 87(2)(b) refused to exit. PO Frasca repeated his instruction several times, stating, "I just want to talk to you outside the car." § 87(2)(b) continued to refuse to exit and said something along the lines of, "This is ridiculous." PO Frasca then placed his hand through the driver side window and opened the door. When PO Frasca did so, § 87(2)(b) scooted from the driver seat into the passenger seat, saying, "I cannot believe this. Record this. This is unbelievable," referring to § 87(2)(b).

PO Frasca denied hearing Lt. Daverin say to § 87(2)(b) "Get out of the fucking car," and, "I am not going to ask again. Get the fuck out of the vehicle," nor did he make those statements himself.

PO Frasca then opened the door and reached inside with his both arms to grip § 87(2)(b) by his arm and pull him from the vehicle. PO Frasca did not otherwise make contact with § 87(2)(b). § 87(2)(b) did not actively resist PO Frasca, though he did make himself dead weight, so that PO Frasca had to pull him out of the car. Afterwards, PO Frasca walked § 87(2)(b) to the rear of the car. PO Frasca did not hear Lt. Daverin say to § 87(2)(b) "Oh, you fucking millennials. You think we have to tell you shit? We don't have to tell you anything," or, "Maybe you should be like your friend. You need a fucking attitude adjustment," or, "What the fuck you were thinking telling the police officer you don't want to get out of the car?", nor did he make these statements himself. PO Frasca denied that Lt. Daverin used any profanity towards § 87(2)(b) at any point during this incident.

After PO Frasca pulled § 87(2)(b) out of the car, Lt. Daverin told him that § 87(2)(b) was going to be placed under arrest for refusing to exit the car.

PO Frasca stated in the criminal court complaint (BR 29) that he instructed § 87(2)(b) numerous times to exit the car, but he refused saying, "No, I am not getting out until you explain."

PO Reilly (BR 10) did not remember what observations he made of any traffic infractions. PO Reilly approached the car from the front passenger side, while Lt. Daverin and PO Frasca approached from the front driver side. As he approached the vehicle, PO Reilly saw § 87(2)(b) throw something inside the car in the direction of its front passenger seat. PO Reilly did not see the object that was thrown.

Once they reached the vehicle, PO Reilly heard PO Frasca ask § 87(2)(b) to exit the car and heard § 87(2)(b) refuse. PO Reilly did not recall if he heard Lt. Daverin interact with § 87(2)(b) nor did he hear if § 87(2)(b) was asked to provide his driver's license or registration. PO Frasca asked § 87(2)(b) multiple times to exit the car, but § 87(2)(b) refused each time. Eventually § 87(2)(b) exited the car, but PO Reilly did not see how. PO Reilly explained that he did not pay much attention as to what was going on at the front driver side because he was dealing with § 87(2)(b). PO Reilly made no mention of smelling marijuana.

PO Reilly did not hear Lt. Daverin say to § 87(2)(b) "Get out of the fucking car," and, "I am not going to ask again. Get the fuck out of the vehicle," nor did he hear PO Frasca make those statements to § 87(2)(b). PO Reilly also did not hear Lt. Daverin say to § 87(2)(b) "Oh, you fucking millennials. You think we have to tell you shit? We don't have to tell you anything," or, "Maybe you should be like your friend. You need a fucking attitude adjustment" or, "What the

fuck you were thinking telling the police officer you don't want to get out of the car?" at any point during this incident.

Officers who conduct routine traffic stops may exercise their discretion to require occupants to exit a vehicle once a lawful stop has been effected, out of concern for safety and without particularized suspicion. People v. Isaac, 107A.D. 3d 1055 (2013) (BR 11).

An officer must use only that force reasonably necessary to gain control of a subject or to effect an arrest. Patrol Guide Procedure 221-01 (BR 14)

§ 87(2)(g)

§ 87(2)(b)

Allegation C – Abuse of Authority: At § 87(2)(b) in Queens, Police Officer Patrick Reilly searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) (BR 01) said that when he was initially pulled over, he picked up a water bottle from the center console, drank from it, and then placed the bottle back in the center console. After § 87(2)(b) was removed from the car, PO Reilly asked him, "What did you throw out from the car?" § 87(2)(b) told PO Reilly that he did not throw anything, and that he drank some water from a bottle which he then placed in the center console. PO Reilly insisted that he saw § 87(2)(b) throwing something from the car. PO Reilly then went to the front passenger side and got inside the front passenger seat of § 87(2)(b)'s car. By that time, § 87(2)(b) had exited the car and was standing behind § 87(2)(b). § 87(2)(b) saw PO Reilly place his knees on the front passenger seat and lean in to check the center console area. PO Reilly did not retrieve anything and exited the car several seconds later. When PO Reilly returned, he said that he did not find anything.

After § 87(2)(b) was placed in the police vehicle, he saw PO Reilly enter his car in order to transport it to the 100th Precinct stationhouse.

§ 87(2)(b) (BR 01) denied smoking marijuana on that day of the incident or that his car had any odor of it. § 87(2)(b) acknowledged that at the time of the incident, he had a miniscule quality of marijuana in his pants pocket, which he stored in his mother's prescription pill bottle so it would not smell. § 87(2)(b) denied having any loose marijuana in the car.

§ 87(2)(b) (BR 26) wrote in his 311 complaint that after he was brought to the stationhouse, he heard PO Frasca discuss § 87(2)(b)'s arrest with another officer. The officer told PO Frasca to add in the arrest paperwork that he smelled odor of marijuana and that it would justify everything. § 87(2)(b) then saw PO Frasca rip a sealed envelope that contained his arrest paperwork and made some corrections.

§ 87(2)(b) (BR 07) said that after § 87(2)(b) was brought to the rear of the car, he exited as well voluntarily and walked to the rear of the car to see what was going on. Before § 87(2)(b) could reach the rear, PO Reilly asked him not to come closer and to move away. § 87(2)(b) complied. § 87(2)(b) did not see PO Reilly entering or searching § 87(2)(b)'s car at the scene. § 87(2)(b) did not see § 87(2)(b) throw anything from or inside the car, nor did he do so himself. § 87(2)(b) denied that he or § 87(2)(b) smoked marijuana or that the car smelled like marijuana.

§ 87(2)(b)'s arrest report (BR 16), UF-61 (BR 23), and property vouchers (BR 24) indicate that § 87(2)(b) was found in possession of a quantity of marijuana packed in a prescription container that was not issued in his name. The arrest report (BR 16) indicated that at the time of the arrest, § 87(2)(b)'s condition appeared normal. The above-discussed police documents do not indicate if the officers detected an odor of marijuana emanating from the car or the car's occupants.

As was previously discussed, PO Reilly (BR 10) said that when he initially approached § 87(2)(b)'s car, he saw the driver, § 87(2)(b) throw something inside the front passenger seat. PO Reilly could not describe what he saw being thrown.

Upon approaching the front passenger side, PO Reilly spoke to the passenger, § 87(2)(b) but did not remember what their conversation was about. § 87(2)(b) appeared calm. PO Reilly could not see § 87(2)(b) but heard § 87(2)(b) refuse PO Frasca's instructions to exit.

After § 87(2)(b) exited, PO Frasca and Lt. Daverin walked him to the rear of the car. PO Reilly decided to check the front passenger seat to see what § 87(2)(b) had thrown initially. Aside from that, there was no other reason why he entered § 87(2)(b)'s car at that time. PO Reilly asked § 87(2)(b) to exit and § 87(2)(b) complied. PO Reilly then leaned into the front passenger side of § 87(2)(b)'s car, with his head and upper torso entering the car, and checked the front passenger seat. PO Reilly did not find anything and did not check other areas of the car.

Lt. Daverin (BR 08) said that when he initially approached the car, he saw § 87(2)(b) throw something towards the front passenger seat. Lt. Daverin did not see what it was, but suspected that it could have been a weapon. When Lt. Daverin approached the front driver side, he smelled a strong odor of marijuana emanating from the car. Lt. Daverin could not say if § 87(2)(b) appeared under the influence of marijuana because upon his initial approach § 87(2)(b) became uncooperative, refused to exit the car, and then rolled up the car's window closing it on Lt. Daverin's arm when Lt. Daverin attempted to open the door. At that point, Lt. Daverin became concerned about his safety and did not pay attention to § 87(2)(b)'s physical condition or what he was doing in the car.

Lt. Daverin did not pay much attention to what PO Reilly was doing, because he was dealing with § 87(2)(b). After § 87(2)(b) was placed under arrest but before he was transported to the stationhouse, Lt. Daverin saw PO Reilly enter § 87(2)(b)'s car from the front passenger side and check the immediate area. Lt. Daverin explained that PO Reilly did so to see what § 87(2)(b) had thrown. PO Reilly did not find anything. Lt. Daverin suggested that he might have instructed PO Reilly to enter the car. Lt. Daverin said that because § 87(2)(b) was arrested, his car was transported to the 100th Precinct stationhouse where it was thoroughly searched and vouchered as part of § 87(2)(b)'s arrest. No weapon was recovered.

PO Frasca (BR 09) said that while walking towards § 87(2)(b)'s car, PO Reilly announced that he thought he saw the passenger, § 87(2)(b) throw something from the car. PO Reilly did not elaborate further and continued walking to the front passenger side. PO Frasca assumed that PO Reilly went to the passenger side to investigate. PO Frasca did not himself observe any movements inside the vehicle.

When PO Frasca approached the front driver side, he detected an odor of marijuana. Because of this, and because § 87(2)(b)'s eyes were slightly red, he thought that § 87(2)(b) may have been driving while under the influence of marijuana. § 87(2)(b)'s later combative behavior, in that he refused to exit the car, also contributed to this suspicion.

PO Frasca had no particular reason to believe that § 87(2)(b) was armed at the time of the incident, but added that it was "completely possible" he was. PO Frasca later added that § 87(2)(b)

§ 87(2)(b)'s combative nature – refusal to exit the car upon numerous requests and that he eventually had to be pulled out from the car – made him think he might be armed or that he might have had contraband on his person.

After § 87(2)(b) was removed from the car, he was brought to the rear of it. PO Frasca did not see PO Reilly entering § 87(2)(b)'s car as he was focused on § 87(2)(b) and did not pay much attention what was going on around him.

PO Frasca stated in the criminal court complaint (BR 29) that when he approached § 87(2)(b)'s car, he smelled an odor of marijuana.

According to People v. Valette, 88 A.D.3d 461 (2011) (BR 17), if, during a lawful car stop, the police officer detects the odor of marijuana emanating from the vehicle, the police officer then has a probable cause to arrest the subject, and to search the vehicle under the automobile exception. The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants. People v. Chestnut, 43 A.D.2d 260, (App. Div. 1974) (BR 18).

Even if a police officer does observe “furtive movements” by the occupants of a vehicle, in and of itself, will not justify a vehicular search. While those movements alone would not justify a police intrusion into the vehicle, the presence of additional factors can justify the officers' reasonable suspicion that there could be a weapon in the vehicle that posed an “actual and specific danger.” People v. Newman, 96 A.D.3d 34 (N.Y. App. Div. 1st Dep't Apr. 17, 2012) (BR 25).

An officer is permitted to search the vehicle incident to arrest: (1) when the arrestee is unsecured and within reaching distance of the passenger compartment, and (2) where there is a reason to believe that passenger compartment contains evidence of the crime charged. Arizona v. Grant, 556 U.S. 332 (2009) (BR 19).

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: At § 87(2)(b) in Queens, Police Officer Michael Frasca questioned § 87(2)(b)
Allegation E – Abuse of Authority: At § 87(2)(b) in Queens, Police Officer Michael Frasca frisked § 87(2)(b)
Allegation F – Abuse of Authority: At § 87(2)(b) in Queens, Police Officer Michael Frasca searched § 87(2)(b)
Allegation G – Abuse of Authority: At § 87(2)(b) in Queens, Lieutenant Henry Daverin searched § 87(2)(b)

§ 87(2)(b) (BR 01) said that after PO Reilly searched his car, PO Frasca asked § 87(2)(b) “Do you have any weapons on you?” and, “Do you have anything I should know about?” § 87(2)(b) replied, “Not really, but I do not consent to any searches.” PO Frasca patted down and placed his hands inside § 87(2)(b)’s front pants pockets. PO Frasca removed § 87(2)(b)’s keys, an electronic cigarette, and a prescription pill bottle belonging to his mother, § 87(2)(b) which contained approximately one or two grams of marijuana. Immediately afterwards, § 87(2)(b) was placed in handcuffs and placed in the police vehicle.

§ 87(2)(b) did not allege that he was frisked or searched by Lt. Daverin during this incident.

§ 87(2)(b) (BR 07) said that after § 87(2)(b) was removed to the rear of the car, he saw Lt. Daverin search § 87(2)(b)’s pants pockets and remove a prescription pill bottle that contained marijuana. Because PO Reilly did not allow § 87(2)(b) approach § 87(2)(b) could not hear any of the conversation Lt. Daverin and PO Frasca had with § 87(2)(b).

PO Frasca (BR 09) said that once § 87(2)(b) was removed from the car, Lt. Daverin informed him that § 87(2)(b) was going to be placed under arrest for refusing to exit the car. After § 87(2)(b) was handcuffed, PO Frasca frisked him by patting down his back pants pockets, as he was about to place him in the police vehicle to transport to the stationhouse to make sure that § 87(2)(b) had nothing on him. PO Frasca then reached into § 87(2)(b)’s pockets, resulting in the recovery of the pill bottle from his rear pocket. PO Frasca did not recall asking § 87(2)(b) if he had any weapons. PO Frasca said that there was no particular reason to believe § 87(2)(b) was armed at the time, thought it was “completely possible” that § 87(2)(b) was. PO Frasca later added that § 87(2)(b)’s combative nature made him think he might be armed, or that he might have contraband of some kind on his person.

Lt. Daverin (BR 08) said that when § 87(2)(b) was brought to the rear of the car, he observed a three-by-four inch, hard, cylinder-shaped object inside § 87(2)(b)’s pants pocket, which he suspected might have been a weapon. Lt. Daverin did not remember in which pocket he saw the bulge. He then placed his hand inside this pocket and removed the object, a prescription pill bottle that did not bear § 87(2)(b)’s name and contained a small quantity of marijuana. Lt. Daverin placed § 87(2)(b) in handcuffs and walked him to the police vehicle. Lt. Daverin did not hear PO Frasca ask § 87(2)(b) if he had any weapons. Lt. Daverin suspected § 87(2)(b) might have a weapon in the car, when he saw him throwing something in the front passenger seat.

PO Reilly (BR 10) said that he did not see PO Frasca or Lt. Daverin frisk or search § 87(2)(b) and did not hear PO Frasca ask § 87(2)(b) if he had any weapons. PO Reilly learned only at the 100th Precinct stationhouse that § 87(2)(b) was found in possession of a quantity of marijuana contained in a prescription pill bottle.

Officers who conduct routine traffic stops may exercise their discretion to require occupants to exit a vehicle once a lawful stop has been effected, out of concern for safety and without particularized suspicion. People v. Isaac, 107A.D. 3d 1055 (2013) (BR 11).

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. NY CLS Penal § 195.05 (BR 12)

Interference must be at least in part physical in nature. In People v. Williams (Donald) (BR 31), 2017 N.Y. Slip Op 50478, a motorist who, upon lawful stop for a traffic infraction, and after officers observed clear signs of intoxication sufficient to create probable cause of DUI, refused instructions to exit the vehicle and locked the vehicle's doors so that officers had to reach into the vehicle to unlock it and physically remove the defendant, was found to have committed obstructing governmental administration by means of interference.

According to People v. Valette, 88 A.D.3d 461 (2011) (BR 17), if, during a lawful car stop, the police officer detects the odor of marijuana emanating from the vehicle, the police officer then has a probable cause to search the vehicle and its occupants.

An officer may question a civilian when he has found suspicion to believe that criminality is afoot. A pat-down frisk may be conducted when an officer reasonably suspects that the individual is in possession of a weapon. People v. DeBour, 40 N.Y. 2d 210 (1976) (BR 30)

Furtive movements and nervous behavior, absent more, cannot provide the police with a founded suspicion of criminality. People v. Negroni, 38 Misc. 3d 1224(A) [Sup. Ct. Bronx County] (2013) (BR 32) Behavior which alone is susceptible of innocent as well as guilty interpretation will not generate a founded or reasonable suspicion that criminality is afoot. People v. Barreto, 161 A.D.2d 305 [1st Dept. 1990] (BR 33)

§ 87(2)(g)

§ 87(2)(g)

Finally, it is undisputed that § 87(2)(b) refused to exit his vehicle despite repeated instructions. In Williams (Donald), officers had probable cause to believe that the motorist had committed a crime, and as such the occupants' refusal to exit impeded their investigation of this crime. § 87(2)(g)

Allegation H – Discourtesy: En route to the 100th Precinct stationhouse, Lieutenant Henry Daverin spoke discourteously to § 87(2)(b)

§ 87(2)(b) (BR 01) said that after he was placed in handcuffs, Lt. Daverin and PO Frasca transported him to the 100th Precinct stationhouse. En route to the stationhouse, § 87(2)(b) kept asking Lt. Daverin and PO Frasca what he was stopped for. Lt. Daverin said to § 87(2)(b) “Well, if you want to be a dick, we can be dicks all night.”

Lt. Daverin (BR 08) said that he and either PO Frasca or PO Reilly transported § 87(2)(b) to the stationhouse, but denied saying to § 87(2)(b) “Well, if you want to be a dick, we can be dicks all night.” Lt. Daverin denied using any profanity towards § 87(2)(b) en route to the stationhouse.

Neither PO Frasca (BR 09) nor PO Reilly (BR 10) heard Lt. Daverin make the alleged statement.

§ 87(2)(g)

Allegation I – Discourtesy: At the 100th Precinct stationhouse, Police Officer Michael Frasca spoke discourteously to § 87(2)(b)

§ 87(2)(b) (BR 01) said that when he was brought to the 100th Precinct stationhouse, he was placed in the holding cell. Several minutes later, PO Frasca entered the room and proceeded to fill out § 87(2)(b)'s arrest paperwork. Besides § 87(2)(b) and PO Frasca, there were no other prisoners in the cells or any other officers in the room. PO Frasca said to § 87(2)(b) “Oh man, I am really sorry you did this to yourself.” § 87(2)(b) asked PO Frasca what exactly he did to himself. PO Frasca replied, “First of all, what were you thinking? Are you fucking crazy telling the officer you do not want to get out of the vehicle?” § 87(2)(b) told PO Frasca that the officers never explained to him why he was pulled over or asked him for his driver's license and registration.

PO Frasca (BR 09) said that after § 87(2)(b) was brought to the stationhouse, he completed § 87(2)(b)'s arrest paperwork. PO Frasca interacted with § 87(2)(b) in the holding cell in order to obtain information required for arrest processing. PO Frasca denied saying to § 87(2)(b) "First of all, what were you thinking? Are you fucking crazy telling the officer you do not want to get out of the vehicle?," nor did he use any profanity towards § 87(2)(b) during their encounter at the stationhouse.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad: 4

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date